IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 3182 of 2007(D)

OS.164/2004 of MUNSIFF COURT, THALASSERY

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PETITIONER:

M.V.GOPALAN NAMBIAR,
KAMALALAYAM, P.O.KIZHUNNA, CHIRAKKUTHAZHA,
KANNUR DIST., PIN 670007.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI
SRI.R.JAYACHANDRAN

RESPONDENTS:

MANIKKOTH VIJAYAN,
S/O.NARAYANAN NAMBIAR, RESIDING AT 'NAWAK',
P.O.KEEZHUNNA, CHIRAKKUTHAZHA, KANNUR DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.3182 OF 2007

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Dated this the 9th day of February 2007

JUDGMENT

The petitioner is the plaintiff in O.S.164 of 2004 on the file of Munsiff Court, Thalasseri. Summons to the defendant issued through process server was refused by the defendant. Thereafter, an ex-parte decree was passed on 24-7-2004. Immediately after the decree was passed, the respondent moved petition to have the ex-parte decree set aside. According to him, he refused the notice being not aware that the person who was attempting to serve notice on him was an officer of court. However considering the entire circumstances of the case, the trial court allowed the petition to have the ex-parte decree set aside on payment of cost of Rs.1,000/-. The challenge is against the said order, copy of which is produced as Ext.P3.

It was considering the entire circumstances of the case that the respondent was given an opportunity by the court below to contest the suit and that was on condition of his paying cost of Rs.1,000/- to the petitioner/plaintiff. It is seen that immediately after the decree was passed the respondent moved the petition

for setting aside the ex parte decree. There is nothing wrong in the court below having permitted the respondent to contest the suit imposing terms especially when it has been held by the Apex Court in several decisions that the party should not be permitted to walk off with an ex-parte decree depriving an opportunity for the other side to have a contest. This writ petition in the circumstances is devoid of merit and is dismissed.

K.P.BALACHANDRAN, JUDGE

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